

Bring Democracy to Indian Reserves  
Toronto Globe and Mail  
December 20, 2006

Aboriginal self-government is one of those rare ideas that can draw support across the entire political spectrum. Those on the left welcome it as the emancipation of oppressed people, while those on the right see it as an opportunity to dismantle an expensive system of bureaucratic socialism. Potentially, self-government can be a winner for everyone—left, right, and, most importantly, aboriginal people themselves—but only if we get beyond some basic difficulties of implementation.

The fundamental problem is the *Indian Act*, first passed in 1876 but based on even older legislative models. Its purpose was the exact opposite of self-government. In the name of civilizing native people and preparing them for assimilation into Canadian society, it created a paternalistic regime in which Indians were not self-governing citizens but objects of administration. The Minister of Indian Affairs, acting through appointed Indian Agents, had control over property, contracts, education, employment, housing, and other aspects of daily life that other Canadians manage for themselves in civil society.

When the demand for aboriginal self-government became irresistible, Canada responded, not by replacing the *Indian Act* with more appropriate legislation, but by abolishing the position of Indian Agent and delegating Departmental powers to local governments on Indian reserves. As a result, band governments now possess the same comprehensive control over their people's property, jobs, and housing that Indian Agents used to exercise. In too many cases, local factionalism replaces distant administration as an oppressive force in people's lives.

It is not good enough simply to transfer hypertrophic power from one level of government to another. The *Indian Act* urgently needs to be replaced, or at least amended, to create a modern framework for responsible self-government.

The highest priority should be democracy. Just as each province has legislation that lays down the rules for local governments, federal legislation should set up a model for aboriginal governments, with reasonable latitude for local variation. There should be an agency something like Elections Canada to guarantee the procedural fairness of elections in the more than 600 First Nations governments. Although provided for in legislation, such an agency could and should be run by the First Nations themselves, subject to the appeal to the courts required by the rule of law.

Democratic accountability means transparency. Just as the media cover the proceedings of other governments, they should be able to attend and report on meetings of First Nations governments. Such governments should be required by enforceable legislation to publish their budgets, expenditures, and decisions in timely fashion. This would be a welcome change from present practice, in which band councils operate more like boards of private corporations than like public governments.

There needs to be a degree of self-funding through local taxation. Unless people have to reach into their own pockets to pay for public services, local government is little more than a conspiracy against the taxpayer. Of course, subsidies from Ottawa to reserve governments will continue, just as all provinces heavily subsidize their municipalities. But a component of self-funding is essential to keep aboriginal self-governments responsible to their own people.

Property rights are also an essential underpinning of modern democracies. Though most of Canada is Crown land, Canadians take it for granted that, in the areas where people live, they can have fee simple ownership of land for building homes and operating businesses. But on Canadian Indian reserves, the most common form of individual property is the so-called customary right, which exists only at the pleasure of the band council. Councils can and do expropriate these rights without compensation, and courts will not intervene because customary rights are not grounded in legislation. Lack of judicial protection jeopardizes and devalues customary rights, while the *Indian Act's* prohibition on seizure renders them useless as collateral for a mortgage unless the band council agrees to guarantee repayment of the loan.

In the present state of affairs, the typical resident of a reserve has no assurance of fair elections, indeed no assurance that elections will even take place, given that more than half of First Nations rely on so-called "traditional" ways of choosing their governments. The typical resident also has no easy method of knowing what his government is doing or spending, and no guaranteed way to own a home or operate a business on the reserve. If we saw such a situation in another country, we would denounce it in international forums; but we take it for granted as the inevitable destiny of the 2-3% of Canadian citizens who are status Indians.

Unfortunately, Indian organizations dug in to block Indian Affairs Minister Bob Nault's reform efforts in 2002; and they are digging in again to oppose Jim Prentice's recent proposal to make human rights legislation apply on Indian reserves. Aboriginal leaders would be better advised to get out in front, to cooperate with the federal government in developing a modern legislative framework for self-government to replace the *Indian Act*. Better that than the imposed solution which will be the eventual response to obstruction.

Tom Flanagan is a professor of political science at the University of Calgary. His latest book is *Self-Determination: The "Other Path" for Native Americans* (with Terry Anderson and Bruce Benson).